SUSAN S. SIMMONS

IBLA 83-27 Decided November 30, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 101928 and U MC 101929.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of assessment work on the claim on or before Oct. 22, 1979, and thereafter prior to Dec. 31 of each calendar year, must file with BLM a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not timely filed, for any reason, the consequence must be borne by the claimant.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

   The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not

depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Evidence: Presumptions -- Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers, and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

APPEARANCES: William H. Simmons, Esq., Seattle, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Susan S. Simmons appeals the September 9, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), which declared the unpatented Bolinder Strike Nos. 1 and 2 lode mining claims, U MC 101928 and U MC 101929, abandoned and void for failure to timely file evidence of assessment work performed or a notice of intention to hold the mining claims, as required by section 314 of the Federal Land Policy and Manage- ment Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claims were located in May 1955. Copies of the notices of location were filed with BLM August 24, 1979, but there is no evidence that any proof of labor was filed at that time, or at any time on or before October 22, 1979. Proofs of labor for 1980 and 1981 were timely filed with BLM in each year.

Appellant states that all necessary instruments required by FLPMA were filed with BLM in 1979, and that she was verbally assured by BLM employees that the initial filings were complete and timely so nothing more was required until 1980, when a current proof of labor had to be filed. She asserts that she had no intention of abandoning these claims.

[1] Section 314 of FLPMA requires that, for mining claims located prior to October 21, 1976, in addition to the copy of the location notice, evidence of assessment work or a notice of intention to hold the claim be filed with the proper office of BLM on or before October 22, 1979, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation. Where, as here, BLM reports that it has no record of receipt of the required proof of labor or a notice of intention to hold the claim, filed on or before October 22, 1979, the presumption of abandonment must attach.

Despite appellant's statement that the proof of labor was transmitted to BLM with the copies of the location notices, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). Filing is accomplished only when a document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f). This Board has no authority to excuse lack of compliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] As the Board stated in Lynn Keith, supra:

> The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).
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> * * * Appellant also argues that the intention not to abandon these claims was apparent * * *. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97; 88 I.D. at 371-72.

[3] A legal presumption to regularity attends the official acts of public officers, and in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Kephart v. Richardson, 505 F.2d 1085, 1090 (3rd Cir. 1974); Lawrence F. Dye, 57 IBLA 360 (1981). Rebuttal of such a presumption requires the presentation of substantial countervailing evidence. Stone v. Stone, 136 F.2d 761, 763 (D.C. Cir. 1943).

We do not find the assertions of appellant to constitute a sufficient predicate for holding that the 1979 proof of labor was received by BLM and that BLM then lost or misplaced it.

Appellant may wish to confer with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Melvin S. Mirkin
Administrative Judge
Alternate Member